

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL JACOBSON,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. RED-02-0048

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on September 23, 2003.

1.2 **Appearances.** Appellant Michael Jacobson was present and was represented by Spencer N. Thal, General Counsel for Teamsters Local 117. Morgan Damerow, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of reduction in salary for neglect of duty, insubordination, gross misconduct, and willful violation of the published employing agency or Department of Personnel rules or regulations. Respondent alleged that Appellant failed to provide timely health services to an inmate, falsified the inmate's medical health record, and failed to follow a directive to perform the inmate's "blood draw."

## II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 26, 2002.

2.2 Appellant is a Licensed Practical Nurse at the McNeil Island Correction Center. Appellant began his employment with the state of Washington in 1985, and he became employed at McNeil Island Correction Center in 1998.

2.3 Appellant had a good performance record and no history of prior formal disciplinary action. However, his personnel file included a January 24, 2002 memo regarding expectations for efficiently processing patients.

2.4 By letter dated August 23, 2002, Alice Payne, Superintendent of McNeil Island Correction Center, informed Appellant of his reduction in salary from Range 44, Step K to Range 44, Step G, effective September 16, 2002 through December 16, 2002. Ms. Payne alleged that Appellant failed to provide an inmate with timely health services for a blood draw, rescheduled the inmate for another day, falsified the inmate's medical record by writing "no show" even though the inmate had appeared for his appointment, and failed to follow a directive to perform the inmate's "blood draw."

2.5 WAC 246-840-705 (15), Standards of Nursing Conduct or Practice, requires licensed practical nurses to make accurate entries into records and prohibits nurses from falsifying or knowingly making incorrect entries into client's records.

1 2.6 WAC 246-840-710, 1(c)(d), Violations of Standards of Nursing Conduct or Practice, states  
2 that willfully making incorrect entries and/or false entries in records pertaining to nursing care may  
3 be grounds for action.

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5 2.7 The Department of Corrections Policy Directive 610.650, Outpatient Services, requires that  
6 confined offenders shall receive unimpeded access to health care services.

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8 2.8 By signature dated July 20, 1998, Appellant acknowledged that he received the Department  
9 of Corrections Employee Handbook and agreed to become familiar with its contents. Appellant  
10 also agreed that it was his responsibility to become familiar with the agency policies and directives.

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12 2.9 The Health Services Department at McNeil Island Correction Center had a practice of  
13 providing a computer printout of the day's appointments to the health care professionals and a  
14 process for tracking inmates upon arrival for their health care appointments. As the inmates  
15 arrived, they gave their "call out slip" to the correctional officer stationed at Health Services. The  
16 correctional officer gathered the "call out slips" in order of the inmates' arrival, and the health care  
17 professionals saw the inmates in that order. The correctional officer informed the health care  
18 professionals which inmate to see next.

19  
20 2.10 On April 26, 2002, at 9:10 a.m., Inmate Way arrived at Health Services for his scheduled  
21 9:30 a.m. appointment to have his blood drawn. Clarence Phillips, Correctional Officer, mistakenly  
22 put Inmate Way's "call out slip" in the stack for completed appointments. Consequently, Appellant  
23 was unaware that Inmate Way had arrived and he was overlooked for his appointment.

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25 2.11 At approximately 11:00 a.m., Appellant wrote "no show" in Inmate Way's medical record  
26 and noted that he intended to reschedule the appointment.

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2 2.12 Inmate Way waited approximately 2 hours and 45 minutes for his appointment when Officer  
3 Phillips realized that he put the inmate's "call out slip" in the wrong stack. Officer Phillips reported  
4 the mistake to Len DeJong, Registered Nurse, and Patricia Callahan, Registered Nurse. Mr. DeJong  
5 subsequently informed Appellant that Inmate Way was in the waiting room. Ms. Callahan, the lead  
6 registered nurse for that work shift, instructed Appellant to perform Inmate Way's "blood draw" so  
7 the inmate could leave.

8  
9 2.13 Appellant was scheduled to leave work early that day for a personal medical appointment,  
10 and he had other lab work to complete before he could leave. Therefore, Appellant decided that he  
11 did not have sufficient time to complete Inmate Way's "blood draw" that day. Appellant explained  
12 to Inmate Way that he would have to be rescheduled, and they agreed on another day for the inmate  
13 to return. Appellant gave Inmate Way an infirmity pass to return on the agreed-upon date.  
14 Appellant failed to correct the "no show" notation in Inmate Way's medical record.

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16 2.14 When Inmate Way returned to Health Services for his rescheduled appointment, a nurse  
17 informed him that Appellant had written "no show" in his medical record even though he had  
18 arrived for his previous appointment. The "no show" documentation in his medical record caused  
19 Inmate Way to be concerned that he might receive an "infraction" because medical appointments  
20 are mandatory for inmates. Therefore, Inmate Way filed a grievance on May 2, 2002 and attached  
21 the infirmity pass as proof that he had arrived for his original appointment.

22  
23 2.15 On June 6, 2002, an Employee Conduct Report was completed. On June 28, 2002,  
24 Superintendent Payne conducted an administrative review with Appellant, Appellant's  
25 representative, and Cynthia Gay, Human Resource Consultant. Appellant stated that he was not  
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1 aware that Inmate Way was in the waiting room; however, he did acknowledge that Inmate Way's  
2 name was on the computer printout of the day's appointments.

3  
4 2.16 After meeting with Appellant and reviewing his responses, Superintendent Payne concluded  
5 that he failed to provide any mitigating circumstances or convincing explanations for his actions.  
6 Further, Superintendent Payne determined that Appellant failed to take responsibility for his  
7 actions.

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9 2.17 Superintendent Payne reviewed the Employee Conduct Report and the relevant agency  
10 policies. Superintendent Payne determined that Appellant had engaged in misconduct by failing to  
11 perform Inmate Way's "blood draw" and falsifying Inmate Way's medical record by writing "no  
12 show" even though he appeared for his appointment. Superintendent Payne concluded that  
13 Appellant neglected his duty, was insubordinate, engaged in gross misconduct, and willfully  
14 violated rules and regulations pertaining to nursing laws and standards.

15  
16 2.18 In determining the level of discipline, Superintendent Payne reviewed Appellant's personnel  
17 file and the January 24, 2002 memo of expectations. Superintendent Payne considered Appellant's  
18 behavior to be unacceptable in that it is critical that health care providers adhere to policies and  
19 regulations and provide medical services that are of the highest quality, including care in an  
20 accurate and timely manner to prevent litigation.

21  
22 2.19 Superintendent Payne determined that Appellant neglected his duty to provide timely  
23 medical care, and violated Policy 610.050, by not performing the inmate's "blood draw."  
24 Superintendent Payne also determined that Appellant neglected his duty to make accurate entries  
25 into records and violated WAC 246-840-705 (15) and WAC 246-840-710, 1(c)(d), by indicating  
26 "no show" in the inmate's medical record. Further, Appellant failed to correct the notation when he

1 became aware that Inmate Way was in the waiting room. Superintendent Payne also determined  
2 that Appellant engaged in insubordination by not complying with Ms. Callahan's directive to  
3 perform Inmate Way's "blood draw."

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5 2.20 Superintendent Payne concluded that a three-month reduction in salary was the appropriate  
6 disciplinary action to get Appellant's attention, change his behavior, and prevent a recurrence.

### 7 8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent argues that Appellant was responsible for Inmate Way's extensive wait on April  
10 26, 2002 because he had a computer printout of the day's appointments and Inmate Way was on the  
11 schedule. Respondent asserts that Appellant should have performed Inmate Way's "blood draw"  
12 because there was no emergency or unusual situation that day to prevent him from doing so.  
13 Respondent contends that Appellant falsified Inmate Way's medical record by writing "no show"  
14 and therefore created a litigation risk. Respondent argues that Appellant failed to correct the "no  
15 show" notation in Inmate Way's medical record. Respondent asserts that Appellant's actions  
16 caused the inmate to file a grievance. Respondent contends that Appellant was insubordinate when  
17 he did not perform the "blood draw" after being directed to do so by Ms. Callahan. Respondent  
18 argues that Appellant offered no convincing explanation for his actions and did not take  
19 responsibility for his actions.

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21 3.2 Appellant argues that the Correctional Officer was the responsible party for monitoring the  
22 inmates as they arrived for their appointments. Appellant asserts that Correctional Officer Phillips  
23 admitted that he put Inmate Way's "call out slip" in the wrong stack. Appellant contends that he  
24 did not falsify Inmate Way's medical record because at the time he was not aware that Inmate Way  
25 was in the waiting room, but he acknowledges that he should have corrected the "no show"  
26 notation. Appellant argues that Inmate Way had no reason to fear being infraacted for the "no show"

1 notation because health care professionals do not infract inmates for not appearing for their  
2 appointments. Appellant asserts that he did not have sufficient time to complete Inmate Way's  
3 "blood draw" because he had to leave work early that day, but that he would have done so if he had  
4 known earlier that Inmate Way had appeared for his appointment.

#### 5 6 **IV. CONCLUSIONS OF LAW**

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
8 herein.

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10 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
11 the charges upon which the action was initiated by proving by a preponderance of the credible  
12 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
13 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
14 Corrections, PAB No. D82-084 (1983).

15  
16 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
17 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
18 of Social & Health Services, PAB No. D86-119 (1987).

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20 4.4 Respondent has met its burden of proving that Appellant neglected his duty when he failed  
21 to verify whether Inmate Way had appeared for his appointment prior to indicating "no show" in the  
22 inmate's medical record. Further, Appellant recognizes that he should have corrected the "no  
23 show" notation after he discovered that Inmate Way was in the waiting room.

1 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
2 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
3 Dep't of Social & Health Services, PAB No. D94-025 (1995).

4  
5 4.6 Respondent has met its burden of proving that Appellant was insubordinate when he  
6 disregarded Ms. Callahan's specific instructions to perform Inmate Way's "blood draw" on April  
7 26, 2002.

8  
9 4.7 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry  
10 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
11 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
12 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

13  
14 4.8 Willful violation of published employing agency or institution or Personnel Resources  
15 Board rules or regulations is established by facts showing the existence and publication of the rules  
16 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
17 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

18  
19 4.9 Respondent has failed to meet its burden of proof that Appellant's actions rose to the level  
20 of gross misconduct or that he willfully violated rules and regulations pertaining to nursing laws  
21 and standards. Correctional Officer Phillips' mistake in placing Inmate Way's "call out slip" in the  
22 incorrect stack began a series of errors that resulted in Inmate Way being overlooked for his  
23 appointment and the subsequent error in the inmate's medical chart. Respondent has failed to  
24 establish that Appellant intentionally falsified Inmate Way's medical record. Respondent has also  
25 failed to prove that Appellant's actions adversely affected the agency's ability to carry out its  
26 functions.



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2 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to  
3 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
4 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
5 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
6 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
7 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

8  
9 4.11 Based on Respondent's failure to prove that Appellant's actions constituted gross  
10 misconduct or willful violation of published employing agency rules or regulations, we conclude  
11 that a three-month reduction in salary is too severe. Therefore, after considering the totality of the  
12 facts and circumstances, we conclude that the disciplinary sanction should be modified to a one-  
13 month reduction in salary.

14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Jacobson is granted  
16 in part and is modified to a one-month reduction in salary.

17  
18 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

19  
20 WASHINGTON STATE PERSONNEL APPEALS BOARD

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23 Walter T. Hubbard, Chair

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26 Gerald L. Morgen, Vice Chair

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Busse Nutley, Member